CR.RA/323/2001 1/8 JUDGMENT

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL REVISION APPLICATION No. 323 of 2001**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE J.R.VORA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**NARESHKUMAR AMRUTLAL RAVAL**
**Versus**
**STATE OF GUJARAT**

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**Appearance :**
MR CHIMAY GANDHI FOR MR MB GANDHI for Applicant
MR KC SHAH APP for Respondent

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**CORAM : HONOURABLE MR.JUSTICE J.R.VORA**
**Date : 18/01/2006**

**ORAL JUDGMENT**

1 Heard learned Advocate Mr. Chimay Gandhi for the applicant and learned APP Mr. K.C. Shah for the respondent State.

2 Learned Advocate Mr. Gandhi states that the parties being

husband and wife, they have settled the matter before Permanent Lok Adalat on 26.4.2002 and the order passed on that day by Conciliators Mr. Justice P.M. Chauhan (Retd) and Mr. Navin Pahwa, Advocate, is placed on record. According to this order, the parties have arrived at settlement with love and affection because of the intervention of the leading persons and relatives. The Conciliators in the said order expressed request to take lenient view in this Criminal Revision Application.

3 As per the facts of the case, wife of the present applicant preferred one First Information Report against present applicant and other five persons. On filing of the charge-sheet before the Judicial Magistrate, Khedbrahma, which was registered as Criminal Case No. 561 of 1993, after recording of the evidence and hearing the parties, learned Judicial Magistrate, First Class, Khedbrahma, came to the conclusion that the present applicant as well as accused No.2 Shardaben and accused No.3 Jyotsnaben were required to be convicted for the offence punishable under Section 498-A to read with Section 114 of the Indian Penal Code. Present applicant – husband - original accused No.1 was sentenced to undergo simple imprisonment of six months and to pay fine of Rs. 1,000/-, while accused Nos. 2 and 3 were released on probation on their furnishing personal bond of Rs. 2,000/- for two years. Remaining accused were acquitted. This judgment is dated 24th of November, 1995.

4 All the three convicted accused filed Criminal Appeal No. 41 of 1995 against the above said judgment and order of learned J.M.F.C., Khedbrahma, but the said criminal Appeal came to be dismissed by learned Additional Sessions Judge, Sabarkantha at Himatnagar, vide his judgment and order dated 23rd of of July, 2001, confirming the judgment and order delivered by learned Judicial Magistrate, First Class at Khedbrahma and hence this Revision Application by original accused No.1 – husband, out of the three convicted accused.

5 True it is that, the scope of Revision is narrow where the courts below have taken same view on facts. Unless and until grave error of law apparent on face of record is seen or miscarriage of justice is perpetuated, interference in Revision Application is not permissible.

6 The circumstances of the present case are peculiar and exceptional. Ultimately, cause of justice is more served, especially on a matrimonial issue, when riven asunder parties are united.

7 Learned Advocate for the applicant restricts his arguments to the reduction of sentence and to take lenient view as per the recommendation of permanent Lok Adalat.

8 Offences punishable under Section 498-A of the IPC is not compoundable offence, even then, the Apex Court under Section 482 of the Code of Criminal Procedure was pleased to quash the First Information Report for the offence punishable under Section 498-A on the ground that husband and wife decided to live together affectionately. The Supreme Court in the matter of B.S. JOSHI vs STATE OF HARYANA, as reported in (2003) 4 SCC 675 observed as under :

> “10. ..... On facts, it was also noticed that there was no reasonable likelihood of the accused being convicted of the offence. What would happen to the trial of the case where the wife does not support the imputations made in the FIR of the type in question. As earlier noticed, now she has filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. There may be many reasons for not supporting the imputations. It may be either for the reason that she has resolved disputes with her husband and his other family members and as a result thereof she has again started living with her husband with whom she earlier had differences or she has willingly parted company and is living happily on her own or has married someone else on the earlier marriage having been dissolved by divorce on consent of parties or fails to support the prosecution on some other similar grounds. In such eventuality, there would almost be no chance of conviction. Would it then be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences? The answer clearly has to be in the `negative'. It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid reasons including lack of bona fides.”

> “14. There is no doubt that the object of introducing Chaper XX-A containing Section 498-A in the Indian Penal Code was to prevent torture

> to a woman by her husband or by relatives of her husband. Section 498-A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would the counterproductive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of the Indian Penal Code."

9 The above said decision is rendered within the scope of inherent powers of the High Court under Section 482 of the Code of Criminal Procedure. True it is that, justice has to be administered according to law, but the ends of justice are higher than the ends of mere law. Law is not an instrument to be used for inflicting sufferings, but to advance the substantial cause of justice. The matter at hand is a matrimonial matter, which involves delicate human feelings and emotional relationship. This relationship demands mutual trust, regard, respect, love and affection between the spouses. The matrimonial conduct has now come to be governed by statute framed, keeping in view some norms and changed social order. When such a check is authorized by the criminal justice system, then such check must be sought to be controlled in the interest of the individuals as well as in broader perspective for regulating matrimonial norms for making of a well-knit, healthy and prosperous society. When such a matrimonial conduct is governed under penal statute, it becomes very delicate

situation dealing with complex human problems and diverse human beings and the courts have to balance the circumstances prevailing before the trial and even after conviction of the offender, if any, and to administer justice accordingly.

10 I am conscious of the fact that matter on hand is in a shape of Criminal Revision Application wherein both the courts below have reached to the concurrent finding of fact to convict the present applicant. However, from the observations of the Apex Court in the case of B.S. Joshi and Others vs. State of Haryana (supra) it flows that what should be the approach of the Court in given circumstances and especially in matrimonial matters. The hyper-technical view may result in counter productive effects on the very object of social legislation. Therefore, even within the scope of revisional jurisdiction, in cases like present one of exceptional nature, accepting submission of reduction of sentence and to take lenient view, would not be beyond the scope of jurisdiction of this Court.

11 If the matter is viewed from the different angle, then also, jurisprudence of penology prescribes punishments commensurating with the offence, either deterrent or reformative. The essence of an offence in cases of this exceptional nature is its persistency. The facts go to show that as far as back in 2002, according to report of permanent

Lok Adalat, husband and wife decided to live together with love and affection towards each other. This would undoubtedly indicate that the offence for which the applicant was charged does not persist further and to some extent purged and while evil constitutents of the previous behaviour constituting offence is wiped out, by perhaps, stream of pure love and affection for each other, this is the fittest case for reduction of sentence even in Revisional jurisdiction of this Court.

12 Having regard to the above exceptional circumstances without being treated this order to be precedent, alternative available to this court to administer the justice and strengthen the same is to reduce the sentence awarded to the present applicant so as not to cast evil shadows of past upon happy married life of the spouse as learned Advocate for the applicant submits that the spouses have an issue thereafter.

13 In the above view of matter, this Revision Application is allowed to the extent that order passed by the learned Judicial Magistrate, First Class, Khedbrahma on 24th of November, 1995, in Criminal Case No. 561 of 1993 as confirmed by learned Additional Sessions Judge, Sabarkantha at Himatnagar, in respect of the present applicant, is modified and the applicant is directed to pay fine of Rs. 1,000/- for

his conviction under Section 498-A to read with Section 114 of the Indian Penal Code as he was already in custody for some days before filing this Revision Application and treating the said period to be imprisonment undergone, instead of to undergo simple imprisonment of six months and to pay fine of Rs. 1000/- which has been awarded by the learned Judicial Magistrate, First Class, Khedbrahma, as confirmed by learned Additional Sessions Judge, Sabarkantha at Himatnagar. Consequently, sentence of imprisonment awarded to the present applicant to undergo six months simple imprisonment is quashed and he is sentenced to imprisonment he has already undergone and to pay fine of Rs. 1,000/- for the above said conviction, and in default, to undergo simple imprisonment of 8 days. As appearing from the certified copy of the judgment of the learned Judicial Magistrate, First Class, the applicant has already paid amount of fine of Rs. 1,000/- before the Trial Court.

14 This Revision Application is allowed to the above extent. Rule is made absolute to that extent.

**(J.R.VORA, J.)**

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